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ARTICLE XX

Each state shall pay to the provisional council the sum that the latter may designate, to defray the expenses involved in the discharge of its functions, and it shall fix and shall pay the *per diem* rates of the respective constituent delegates.

ARTICLE XXI

The present treaty is to be submitted in each state, as soon as may be possible, for the legislative approval required by its respective constitution; and the ratification shall be communicated immediately to the Central American international office, to which a copy shall be sent in the usual form. Upon receiving the copy of each ratification, this office shall make known the fact to the other states, and such notification shall be considered, and shall be equivalent to, an exchange.

Executed at San José, Costa Rica, in four copies, the nineteenth day of January, one thousand, nine hundred and twenty-one.

In witness whereof the present treaty is signed by:

For the Republic of Guatemala:

SALVADOR FALLA.
CARLOS SALAZAR.

For the Republic of El Salvador:

REYES ARRIETA ROSSI.
MIGUEL TOMÁS MOLINA.

For the Republic of Honduras:

ALBERTO UCLÉS.
MARIANO VÁSQUEZ.

For the Republic of Costa Rica:

ALEJANDRO ALVARADO QUIRÓS.
CLETO GONZÁLEZ VÍQUEZ.

MEMORIAL CONCERNING THE UPPER SILESIAN QUESTION

A GERMAN VIEW

Two reasons impel us to set forth here our attitude toward the Upper Silesian problem.

We advocate the League of Nations idea, not only in general, but in particular at this time in Germany, and since we feel that the question submitted by the Supreme Council to the Council of the League of Nations is a severer test for the League than any question heretofore, both in respect of its effect in the whole world and of the possibilities which it may bring in Germany, we feel ourselves compelled to express our opinions regarding Upper Silesia as both a problem for the League of Nations and for the world.

Furthermore, we are an association of German men and women, of German societies and organizations, and since we know that the decision regarding Upper Silesia will also be a decision regarding Germany's economic and political future, we cannot refrain from expressing our views regarding Upper Silesia as a German question.

In doing so we shall endeavor not to go into the details of the matter, which have already been accumulated and discussed all too copiously, but could still be newly interpreted. Instead, we shall confine ourselves to the essential principles which, in our opinion, are the real kernel of the question.

The advocates of the League of Nations have repeatedly emphasized that the organization's power rests more upon the moral support of the world's public sentiment than upon the political support of the different nations belonging to the League.

Expressions to this effect, coming from all countries and in especially great number during the first session at Geneva, are known to everybody. The League of Nations will receive this support only when it, for its part, possesses the needful authority, or, in other words, when it succeeds in exercising a moral instead of a political sovereignty.

It has become apparent very recently that the governments of the different countries do not enjoy such authority any longer. Since, however, according to a resolution adopted at the first session of the League of Nations, the representatives of the members make their decisions in council and plenum only in their capacity as representatives of their States, and since their decisions are to be regarded only in such light, the League of Nations can arrive at no decision in respect of any matter before it in any other form than as the decision of representatives of States. Hence the League lacks authority in the same degree as the various governments lack it. In such a state of affairs, however, the Upper Silesian question in particular would be left right where it was before, for it is precisely the political, governmental solution of the question that proved too much for Paris. In order to arrive at an impartial vote, unhampered by instructions, dictated by the nature of the matter instead of by political complications—the kind of a solution that is demanded by public opinion of all countries in this case—the Council of the League of Nations must obviously turn to a tribunal in which men can sit who are not the representatives of their States.

Only such a tribunal could clothe its decision with that authority in the eyes of mankind which is absolutely necessary. The resolution referred to, however, creates a situation where nobody can regard the vote of the separate representatives in the Council as the result of their personal, estimable endeavors to get at the truth; on the contrary, one is compelled to regard it as the decisions of the governments in the background. Something of this has already been seen in Paris. In part, also, as diplomacy is conducted today, one will have to look behind the decisions for other motives than those arising merely from the Upper Silesian question itself. Suspicions of this kind will not be directed against individuals, but against the governments, and as to these they will be understandable. No decision can have that quieting influence upon excited public opinion which it was sought to attain by referring the matter to the League of Nations, unless the personal responsibility of internationally trusted men or women stands back of the verdict which the Council of the League of Nations could adopt as its own.

This is especially true as to the in part apathetic, in part overexcited inhabitants of the two countries directly interested, Germany and Poland, both of which, albeit for different reasons, must contend with domestic opposition to the League of Nations idea. These would, in any case, have to make sacrifices in accepting and acknowledging a decision which was not partisan at the outset.

The Council of the League of Nations, in which the allied chief powers, even under their bellicose designation, have been granted permanent representation by the Peace Treaty, is not sufficiently distinct from the Supreme Council, in the view of the public opinion of those lands, to make it possible to repose any especial confidence in the results of its work. On the other hand, any proposal from one of the lands directly interested would find a more open mind. Poland has a legal right to make such proposals. Not only elementary feelings of justice, but also dictates of wisdom, demand that

Germany also be heard. In the last analysis, such a course could be based on the freedom which the Council enjoys of regulating its procedure, and also on the procedure employed by the League of Nations hitherto.

Inherent justice and uprightness are especially necessary for any decision in the case of Upper Silesia, this troubled land which has already suffered so severely from the uncertainty of its fate. Its representatives must be in a position to convince themselves of this justice and uprightness by taking part in the discussions. The inhabitants of Upper Silesia find it intolerable that they, together with the natural resources of the land, shall be made at the same time the objects of a political barter in deals having nothing to do with Upper Silesian interests. On the other hand, it would comfort and quiet them if they could see their problem, both technically and actually, released from the fetters of nationalistic prejudices, no matter how justified these might be, and given the prospect of a consideration from the viewpoint of the best interests of the peoples of Europe.

In this manner the League of Nations, by bringing to the solution of this problem the moral authority of prominent men and by fulfilling, during the discussions themselves, the strict demands of justice, can at the same time bring about a wholesome and effective solution of the international and local difficulties which threaten peace, and can also establish and strengthen its own authority in the world.

There are other reasons besides those connected with the principle of impartiality for not leaving the matter in the hands of the Council of the League of Nations. Since the members of the Council are representatives of States, some of them, following the negotiations in Paris, are looked upon by unprejudiced observers as partisans, for four of the member States committed themselves more or less actively and finally to a definite attitude in the Upper Silesian question. But even if it were conceivable that the representatives in this Council were not bound by what the representatives in that Council said, they would nevertheless form their opinions from the same material, and not merely from plebiscite results, documents and statistics, but also from the same national and political viewpoints. New points of view are what is needed. People must be made to realize that this matter must be adjusted from other considerations than those of national aggrandizement, considerations which have heretofore virtually dictated all discussions of the Upper Silesian problem.

In this connection we must consider the idea of the liberating of economic and cultural life from its all-too-narrow restraints through political forms—an idea which is making great progress at the present time. Any indication that the tribunal entrusted by the Council of the League of Nations with the adjustment of the problem is earnestly endeavoring to find new points of view will make the result of its deliberations the more acceptable for the whole world; for it is beyond question that the peoples are weary of the arguments which have so often been used in the last decades, but which have found so little support in actual occurrences. If a settlement of the boundary question can be reached which is not based upon considerations of economic apportionment of resources, national offense or satisfaction, limitation of the possibilities of armament or fears of exploitation, but upon the possibilities of the cultural appeasement of the majority, then a practical consideration of all other necessary matters on the same basis will be found possible.

The very substance of the right of self-determination, ex-

pressly given to the people of Upper Silesia, was that they should decide to what country they felt themselves drawn, each one for himself, with all his human interests. It is in itself an open question as to how far the right of self-determination can be employed and how far it is properly adaptable to decide the fate of peoples or divisions of peoples. But these considerations, which could still play a part in the question of the Aaland Islands, cannot be regarded here, where we have to reckon with the circumstances of the Peace of Versailles and the plebiscite in Upper Silesia. Once authoritatively acknowledged, the right of self-determination must always be acknowledged and retained as a basic democratic principle.

But what was the result of the plebiscite? No matter how greatly individuals may have been influenced by all kinds of considerations of personal advantage, by the fear of real or imagined pressure, even by bribery, the great majority nevertheless voted with the definite purpose of having their land become part of the cultural unit represented by a political State, whether the German, to which they had belonged, or the Polish, which had been newly created. And as the question was proposed, since the Germans as well as the Poles set up the contention that the land could not be divided, so the question was answered by the people. The decision was to cover Upper Silesia as a whole; it was precisely the genuine Upper Silesian, for whom the idea of the unity of his land stood above everything else. This cannot be controverted by the interpretation of the paragraphs of a supplement to the Peace Treaty. For one thing, these paragraphs exist solely to protect the Upper Silesians' right of self-determination. Furthermore, they contain not a decree, but merely a regulation, which really was not needed, providing that the result of the plebiscite must be that set forth in the orders contained in the supplement to article 88 regarding the carrying out of the matters dealt with.

However, we attach little importance to the juristic side of the matter. Juristic dialectics always grow mute when Justice raises her voice, for Justice demands that not merely the legal side of the question be taken into consideration, but also all other actualities. We believe that Justice must raise her voice here. What the whole world, not merely Germany or Poland alone, and especially what Upper Silesia expects from the activities of the League of Nations is that it will do its work in an independent spirit and be able to support its decision, whatever that may be, without having recourse to pettifogging technicalities. Only then will the world be able to recognize that the League has made progress as an institution and also as to what concerns this concrete case.

Under any procedure, the League of Nations will have to find new fundamentals as to three questions: First, what the inhabitants intended by their vote—that is to say, whether they understood the plebiscite correctly and whether they have been correctly understood; second, what the Upper Silesian problem means for Germany—that is, not for one of the interested lands alone, but for the States that have come to have joint interests as a result of the war; and, finally, what the problem contains for the League of Nations itself—that is, for every branch of the League's mission. Precisely the last-named side of the question threatens to be all too speedily forgotten since the horrors of war have been transferred to battlefields farther away.

It is not necessary for us to make any proposals as to the finding of such fundamentals. But they can be most easily

found if the seeker, instead of searching through the documents in the case, casts his eye upon the actualities of this European tragedy. Its causes can be best studied on the ground itself. Even the hastening of the decision, so urgently necessary in the interests of all concerned, must not prevent the Council from surrounding that decision with all guarantees needful to make it not a new collection of printed paper of the post-bellum period, but a phase of vital life in a new epoch of peace.

But just as surely as the ideals of the League of Nations must direct its decision, just as necessary is it that the real inwardness of the political and economic situation be regarded, not its outward seeming. We must direct attention to the fact that the young democracy in Germany urgently needs some proof of confidence of far-reaching effect, and that this proof must be based on grounds that appeal to the spirit. If land whose national ownership is disputed be handed over to her as to a trustee, in order that it may develop culturally and independently under the protection of this democracy, such a trust, we are convinced, would strengthen all good forces in Germany and spur them on, not only to undo past errors, but also to do creative work. That the majority of the Upper Silesian inhabitants are confident of this is proved by the figures of the plebiscite, to whose German majority the Polish-speaking inhabitants contributed materially.

We, who are the firm opponents of the vociferous defenders of the old order of things, must declare that, both for national and international reasons, we have this confidence in Germany and not in Poland, for Poland has not been able to retain the sympathies of those who are striving to do away with the reign of force and nationalistic egoism.

We believe, furthermore, that, without making ourselves guilty of a one-sided view of things, we must point out the greater importance of Germany for the reconstruction of Europe—an importance which, it is true, is for the moment more negative than positive, since it rests more upon obligations than accomplishments. But the closer we came to the possibility of furthering reconstruction in France and Belgium actively, the worse would be any damage to the conditions precedent therefor, not merely on account of the sufferings of the territories involved, not merely in its bearing on the fulfilling of obligations undertaken, but because of general national-psychological reasons, which must be taken into consideration if we desire peace. And the basis upon which Germany has estimated her ability to fulfill obligations is also naturally the basis of the calculations and expectations of the whole world, in so far as it expects something from Germany.

In conclusion, one thing must be considered which is not directly connected with the Upper Silesian decision, but nevertheless has a close relationship to it. If the reparations can be paid at all, they can be paid only by a people who really want to pay them. This willingness has but recently been attained under difficulties and against hard opposition. If this situation should alter, it would be a blow to all peaceful reconstruction. Nobody who does not wish to see forcible measures employed again can desire that the decision over Upper Silesia should be followed by such a reaction in Germany as must unavoidably come in certain circumstances.

The same is, of course, true also as to Poland, despite the fact that Poland appears more eager to present claims against others than to acknowledge claims against itself. Therefore we emphasize again at the close of this general

discussion that, in order that the decision of the League of Nations may be acceptable for all sides, more weight must be laid upon its form and the reasons, and upon the personalities from whom the decision comes, than upon its material contents. This is the kernel of the matter.

With all respect for the independence and sense of justice of those to whom the Council of the League of Nations may entrust the duty of preserving these essentials, we wish nevertheless to make some practical suggestions, for it is our wish to serve the cause of the League.

The first suggestion is, that the League grant the fullest publicity to the discussions regarding Upper Silesia, and that in doing so it remember how small the purchasing power of the German money is, and that the Polish is still smaller, so that barely the official departments, and in any case no associations or private persons, can buy the expensive printed matter of the League. It must also take into consideration how slight the actual knowledge of the course of procedure and of the legal fundamentals of any act of the League of Nations is. It is unnecessary to point out that misinterpretations or misunderstandings, which could be avoided by adequate information, could be painful and damaging, and how necessary adequate information is as a preparation for the putting into effect of a future decision.

Furthermore, we might point out that the League of Nations but recently found, in its solution of the Aaland conflict, a very effective formula for the protection of minorities. Because we understand that the League of Nations and Germany are for political reasons a mutual disappointment to each other, we stifle the feelings of bitterness and pain which must fill the heart of every German when he sees that no other question has been treated with such unfair partiality as that of minorities. We recommend, therefore, the broadest discussion and consideration by the League of Nations of the matter of the protection of minorities. This can in great measure smooth out the hardships inevitably attendant upon the establishing of a boundary in a thickly populated district inhabited by peoples of different races.

We understand also, though with regret, certain suspicions regarding the possibility of new German armaments. Under the Treaty of Versailles the League of Nations is fully able to employ the sharpest control in this matter. The more it takes this duty out of the hands of the control commissions, which are partisan institutions and desire to be so, and exercises it for the good of its more generally conceived and more broadly regarded duty to preserve the peace of the world, the more it will be able to increase its prestige and to relieve the individual States of their burdens, quiet them, and further their relations to each other. To this extent one could wish that a suggestion made in Paris be taken up again, now that the objection of the weakness of the League of Nations must be dropped, in view of the entrusting to it of the present trial of its strength.

But here, too, measures shaped for a single State are not adequate. On the contrary, Upper Silesia is to be regarded as a part of Europe, whose economic system is dominated in threatening measure by mutual dependency. In the last analysis, then, guarantees must be employed here. An influence upon the distribution of the Upper Silesian raw materials, to be exercised by all interested parties, is a possibility long since approved and lies fully within the confines of the problems which have been referred to the League of Nations and with which it is now hopefully engaged.

In truth, the hour of the decision over Upper Silesia is the

hour of trial for the League of Nations. May it not merely survive it, but also grow great in it. May it regard itself not merely as the juristic personification of all the belief, the hope and the unselfishness which were employed in the battle to establish it, but may it also employ these virtues.

(Signed) GRAF BERNSTORFF,

(Signed) SCHÜCKING,

(Signed) JÄCKH,

The Chairmen of the German League of Nations Union.

EXPECTED DEADLOCK ON FREE TOLLS

The passage through the Senate of the Borah bill, to allow American coastwise shipping exemption from tolls at the Panama Canal, by a vote of 47 to 37 does not mean the passage of the bill. President Harding, although committed by party platform and public speech to the exemption, is opposed to the bill, at least at this time, and the assumption in Washington is that it will be blocked in the House indefinitely.

Mr. Harding's opposition to the bill is twofold: He fears that its passage would disturb the relations of the American Government with the British Government during the Conference on Limitation of Armaments, when he is most anxious that there be perfect understanding and mutual faith. He also feels very soundly, it is believed by many familiar with the question, that if America is to assert a right to free tolls it would be better to do so, and to establish the right, through negotiations.

In the debate preceding the Senate's vote the point was made by Senator Lodge and others opposing the bill, that even if this country has the right to pass such a measure, there may be times, and this is one, when it is not wise or helpful to exercise the right; also, there was a direct attack upon the moral validity of the measure, well voiced by Senator McCumber, who said in part:

The world has branded Germany as a dishonorable nation because, with the exigency of a great war before her in which military necessity was the controlling question, she declared that her treaty with Belgium was but "a scrap of paper."

Without any such exigency before us, and without even an attempt being made to secure a modification of our solemn obligation, we are asked to declare that the Hay-Pauncefote Treaty shall be treated as a mere scrap of paper. Our physical power to do this is just as unquestioned as the physical power of the German Empire to break its treaty obligations with Belgium.

Mr. President, struggle as we may, strain our intellect to its limit for excuses, we will never be able to make the words in this treaty "all nations" mean "all other nations," nor the words "any such nation" mean "any other such nation."

It makes little difference to me, Mr. President, what any political party places in a platform if, upon investigation, it is found that national honor forbids following the course pointed out. National honor is not a partisan question, to be bartered away at the behest of any political organization.

The question before the Congress today is not whether the Clayton-Bulwer Treaty should have been made by the United States. It was so made. It is not whether the Hay-Pauncefote Treaty, in reasserting and pledging this government to the continuation of the "general principle" of article 8 of the Clayton-Bulwer Treaty, was a proper engagement on the part of this government. We did make that engagement. And the only question is whether we shall stand by our solemn engagement or whether if we desire to modify that engagement we shall do it in the only just and proper way, by an amendment of the treaty itself. Even though our purpose be declared as a principle by a political con-

vention, it does not carry with it that this purpose should be effectuated in a dishonorable way, and, for a much stronger reason, if it can be effectuated through an honorable proceeding—a modification of our treaty—that should be the party's course.

In the vote party lines were rent. Senator Underwood, Democratic leader, was at the head of an element of his party that voted for the bill. Senator Lodge, Republican leader, was at the head of an element of his party that voted against it; and this notwithstanding the fact that generally Republican doctrine has been in favor of the idea embodied in the Borah bill, and Democratic doctrine opposed.

The detail vote follows:

FOR THE BILL, 47

Republicans, 35—Ball, Borah, Calder, Cameron, Capper, Cummins, Curtis, Edge, Elkins, Fernald, France, Frelinghuysen, Gooding, Harrold, Johnson, Kellogg, Ladd, La Follette, Lenroot, McNary, Moses, Newberry, Nicholson, Norbeck, Oddie, Page, Penrose, Poindexter, Shortridge, Smoot, Sutherland, Townsend, Watson (Ind.), Weller, Willis.

Democrats, 12—Ashurst, Broussard, Harrison, Kendrick, Ransdell, Reed, Robinson, Shields, Stanley, Underwood, Walsh (Mass.), Walsh (Mont.).

AGAINST THE BILL, 37

Republicans, 17—Brandegge, Colt, Dillingham, Ernst, Hale, Kenyon, Keyes, Lodge, McCormick, McCumber, McKinley, Nelson, New, Spencer, Sterling, Wadsworth, Warren.

Democrats, 20—Caraway, Culberson, Fletcher, Glass, Harris, Heflin, Hitchcock, Jones (N. M.), King, McKellar, Myers, Overman, Pittman, Pomerene, Sheppard, Simmons, Smith, Trammel, Watson (Ga.), Williams.

MR. BORAH REFLECTS

The following reflections of William Borah in the United States Senate, September 26, are as arresting as they are American. Incidentally they indicate the direction along which the blinded nations must go if they would regain their sight.—THE EDITORS.

Reflect upon the situation. We see about us on every hand, in the whole world around, conditions difficult to describe—a world convulsed by the agonies which the follies and crimes of leaders have laid upon the people. Hate seems almost a law of life and devastation a fixed habit of the race. Science has become the prostitute of war, while the arts of statecraft are busy with schemes for pillaging helpless and subject peoples. Trade is suspended, industry is paralyzed; famine, ravenous and insatiable, gathers millions into its skeleton clutches, while unemployment spreads and discontent deepens. The malign shadows of barbarism are creeping up and over the outskirts of civilization. And this condition is due more to the policies which the political dictators of Europe have imposed upon that continent since the armistice than any other one thing. Repression, reprisal, blockades, disregard of solemn pledges, the scheming and grabbing for the natural resources of helpless peoples, the arming of Poland, the fitting out of expeditions into Russia, the fomenting of war between Greece and Turkey, and, finally, the maintenance of an insurmountable obstacle to rehabilitation in the Versailles Treaty—how could Europe, how can Europe, ever recover? Is there no nation to call a halt? Is there no country to announce the gospel of tolerance and to denounce the brutal creed of force, and to offer to a dying world something besides intrigue and armaments? In this stupendous and bewildered crisis, America must do